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7 **IN THE SUPREME COURT OF THE STATE OF ARIZONA**

8 **In re the Matter of:**

9 **PETITION TO AMEND RULE 74**
10 **OF THE ARIZONA RULES OF**
11 **FAMILY LAW PROCEDURE.**
12 .

Supreme Court Number R-15-0006

COMMENT TO AMENDED
PETITION TO
RULE 74 REGARDING PARENTING
COORDINATORS

13 The undersigned, a practicing family law attorney in Maricopa County, Arizona
14 submits the following comments opposing many of the proposed changes to ARFLP 74.

15 **BACKGROUND.**

16 I am commenting on this proposed first amended Rule change because I am a parent and
17 party in Family Court and have suffered under the unethical, incompetent, and abusive conduct of
18 multiple parenting coordinators whose appointment and involvement served to worsen conflict and
19 provided no benefit to any party except to the judge, who was able to shirk his responsibilities, and
20 the parenting coordinators, who charged exorbitantly with no definable benefit and certainly
21 nothing positive worthy of the time, money, and emotional pain inflicted upon the parties.

22 **COMMENTS ABOUT PROPOSED CHANGES.**

- 23
- 24 1. The proposed Section A: The section impactfully lacks acknowledgement that parents
25 have specific rights to make decisions for their children as affirmed in such cases as
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1 Pierce v. Society of Sisters, 268 U.S. 510 (1925). In my own dealings with PCs, it is
2 clear that the rights of parents are neither respected nor considered in decisions...until a
3 parent files with the Appellate Court. Interestingly, the Appellate Court has repeatedly
4 and forcefully rebuked the judges of the Family Courts for failure to respect both
5 established law and parents civil and parenting rights. It would behoove the Committee
6 to create a clear reminder to judges and PCs that they do not have the right to create
7 mandates without legal authority or that lack respect for the rights of parents. While
8 sadly the framework of Family Court loosens procedure in the false assumption it will
9 aid the interests of the child, which it provably has the opposite effect, entering Family
10 Court does not remove any rights of parents despite what PCs and judges may falsely
11 believe.
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- 13
- 14 2. The proposed change to Section B: The Committee should add to the mandatory
15 elements a statement of the hourly rate of the proposed Parenting Coordinator. During
16 the first round of comments the issue of unreasonably high fees for the value provided
17 was a common theme. Further, since the proposed Rule is premised on voluntary
18 understanding, agreement, and stipulation, it is very important that all major aspects of a
19 PC's employment are documented in the stipulation. Having experienced the highly
20 opaque current PC process, I can say from experience that it is highly unreasonable to
21 assert that parties to a PC appointment have reasonable access to information about
22 proposed PCs. In practice, lawyers and judges fail to inform parties of the existence and
23 location of the Behavioral Health Providers List on the Maricopa County Superior Court
24 website. No direct information was provided by my lawyer nor was I directed to
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1 resources about which I was then unaware, such as the disciplinary records for the
2 provider's regulatory body. At no time was I made aware of or provided with a copy of
3 Form 11. And during the current tenure of my current PC, the provider substantially
4 raised his hourly rate with no prior notice. When questioned about the change, the
5 provider arrogantly stated he had the right to raise his rates at any time with no direct
6 notice and I had no recourse. (Email attached as Appendix 1)
7

- 8 3. The proposed change to Section E (5): The Committee should add additional
9 protections. Parties often are new to the Family Court situation, have no experience
10 with Parenting Coordinators, and are being failed by judges and attorneys who do not
11 fully inform parties or point them to resources to research the proposed process or
12 providers. Specifically, an opportunity should be given for a party to revoke their
13 stipulation and the appointment of the PC within an early defined period. My
14 recommendation is that the rule designate that either party may end the appointment of
15 the PC at any time prior to the 4th in-person meeting (or the 61st day after the first issue
16 discussion for PCs who do not meet in person). This should be an absolute right similar
17 to noticing a judge.
18

19 Similarly, I propose the Committee designate that either party may end the term of the
20 PC if the PC alters their hourly rate unless both parties stipulate in writing. As
21 previously described I have experienced the arrogance with which PCs treat their
22 clients, specifically raising rates arbitrarily, without direct notice, and with the
23 assumption they have a god-like right to do whatever they want because the Family
24 Court will not protect the parties or hold the PC accountable in any way.
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1 4. The proposed change to Section F (1): While superficially sounding reasonable, this
2 subsection is oriented in completely the wrong way. It makes no sense that fees can be
3 held unknown until AFTER the stipulation is signed. That would mean the parties are
4 agreeing to something about which they have no knowledge. A basic tenant of a valid
5 compact such as a stipulation is full knowledge.

6
7 The Committee should change this subsection to state that the judicial officer is not
8 allowed to accept a stipulation for appointment as a PC unless the PC's fees have been
9 fully disclosed in writing and the parties explicitly agree. Further, the subsection should
10 explicitly prohibit the PC from raising fees to the parties during the duration of the
11 appointment unless both parties agree to an amended stipulation.

12
13 5. The propose change adding Section F (3): The existing language unfairly
14 prohibits/inhibits parties from asserting their right to request redress of the issue of on
15 party's excessive or abusive use of the PC's services. While I agree that the PC should
16 be able to recommend reallocation of fees to the Court, I believe the right of a party to
17 address the issue with the Court should be explicitly stated. Specifically I reommend
18 that language be added to this subsection by which a party may request in writing to the
19 PC reallocation of fees and their reasoning for the reallocation. The rule should then
20 require the PC to make a report to the Court agreeing or opposing the request and the
21 PCs reasoning and evidence for their stated position.

22
23 6. The proposed change adding Section H (2): The following language should be deleted:
24 "If the parents are unable to reach agreement, the parenting coordinator will decide any
25 disputed issues within the scope of the parenting coordinator's authority in a timely
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1 manner". This language improperly removes from both parents their affirmative right to
2 make decisions for their children. Involvement of a PC does not and cannot revoke such
3 a right and confer it to a PC.

4
5 7. The proposed change adding Section I: In my opinion, this section should be removed in
6 its entirety. A provider already has multiple means to invoke authorities if an immediate
7 danger is perceived, including police and DCS. Since an attorney can be a PC, such a
8 PC would have no additional basis than a reasonable person for ripping children from a
9 parent's home. Even with a mental health professional as a PC, the contact they have
10 with family is so limited that giving them such sweeping authority to disrupt a family by
11 immediate removal of a child is completely unreasonable. The existing pathways of
12 reports to police and/or DCS are sufficient and far more properly supervised.

13
14 8. The proposed change adding Section J: In addition to the existing, the Court should
15 require that a provider keep a record of each issue, with information on:

- 16
- Which party raised the issue,
 - When discussions were held with the duration and venue
 - Whether the issue was decided in favor of the party who raised the issue.
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20 These elements are normally recorded by providers, whether attorneys or behavioral
21 health providers, so such a requirement should not be an additional burden. Parties
22 should have a right to receive a copy upon request such that a summary record of the use
23 of the PC's services by a party is readily available to demonstrate whether the parties are
24 acting in good faith and whether the PC is properly screening requests rather than just
25 making money by encouraging use of his/her services.
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- 1 9. The proposed change adding Section L: This section in effect removes the right to
2 judicial oversight present in the current Rule. As pointed out in other comments,
3 removing such universal oversight by the judicial officer is an unconstitutional
4 infringement of the parties' rights and also illegally vests in the PC judicial powers that
5 the Court cannot delegate. The current right to object should be preserved in its entirety.
6
7 10. The proposed change adding Section O: As previously stated by others in comments,
8 clarity should be given to the fact that the immunity conferred is civil immunity and that
9 criminal immunity is not implied.
10
11 11. The proposed change adding Effective Date: Providing anything other than immediate
12 right to end an existing PC appointment upon adoption of this Rule creates an unequal,
13 two-tiered system for those already having a PC. The proposed Rule should specifically
14 add the right to end upon motion any existing PC appointment under the previous Rule,
15 allowing the parties to move forward with consideration of appointment of a PC under
16 the proposed Rule when adopted. Any other means would create 4th Amendment Equal
17 Protection issues as discussed in detail in other comments. Given that such unequal
18 treatment would directly affect my case, I can state with certainty that this Rule will face
19 an immediate Special Action to the appellate court if language is not added giving
20 parties with existing PC appointments immediate access to the proposed Rule if
21 adopted.
22

23 **GENERAL DISCUSSION**

24 A key problem with the current Parenting Coordinator position and practice is that there are
25 no real protections for parties against abuse, especially early in the case history when children are
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1 young and potential commentary by the PC can have long-lasting negative effects on a parent's life
2 with their children. I assert that the key need of a right revision of Rule 74 must focus on reducing
3 the latitude and authority of PCs, thereby reducing the tools so many PCs use to drive up costs.

4 Some recommended changes to reduce the ability of PCs to abuse the authority granted
5 them and drive up costs for their own benefit:
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- 7 1. *Explicitly enumerate in the Rule that any party or participant in the PC process has the*
8 *explicit and irrevocable right to record any session, proceeding, or other contact.* It is a
9 common tactic of parenting coordinators to require parties to sign a participation
10 agreement that includes a clause forbidding recording of any session. This is in fact
11 contrary to standard appointment orders in Maricopa that allow recording upon request
12 to the PC. But PCs are left by the appointing judges almost completely unsupervised in
13 any practical way, so this negation of the provision in rule is allowed to go on. And
14 what parent would risk angering a judge, especially when family court judges wield
15 such broad and, for all practical purposes, unchecked power? The widespread abuse of
16 due process in family court such as improper restricting of hearing duration exemplifies
17 the risk to any parent who stands up for their rights against the judge's favored,
18 appointed PC, and is likely to be labeled a "troublemaker" and suffer in subsequent
19 decisions. Having objective evidence such as recordings would greatly empower a party
20 to bring misconduct to light on the record. Currently it is the party's word against a
21 person the Court appointed and assumes by possession of some college degree or
22 another that the person is both ethical and capable. And ethical and capable PC should
23 be happy to have an objective record of their conduct. The standard claim that privacy
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1 is required to allow the parties to speak freely is completely hollow, especially
2 considering that no form of therapy is being performed in the PC process. In fact, the
3 average PC session in my experience is little more than a browbeating full of arrogance
4 by the PC and lacking any hint of professional training or judgement. The fact that
5 these people have had degrees conferred upon them is completely undetectable in the
6 often heavy-handed and inept sessions over which they govern.

7
8 The second PC appointed in my case is a very old man with a psychology degree who
9 often confuses what was said in meetings. He would often make statements in meetings
10 and then take actions or make reports that utterly contradicted the facts of the session.
11 Having an irrevocable right to record would have provided an objective record to correct
12 the chaos his actions created and provided the building blocks to have him removed
13 from the case and from the PC list as well.

14
15 Further, this second PC has made several blatant and unethical threats toward me,
16 including threatening to baselessly recommend to the Court that my son be sent to an
17 out-of-state facility if I did not rubberstamp every decision of the Therapeutic
18 Interventionist he recommended and who he regularly recommends for any available
19 position in cases to which he is appointed. Without a recording -- because the rules he
20 forces upon parties agree to no recording -- it would simply be my word against his.
21 And as this PC constantly says, the judge in our case and most judges will simply accept
22 what the PC says or recommends.

23
24 An explicit and irrevocable right by all parties and participants in the PC process to
25 record all sessions and interactions is key to bringing real accountability to the many
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1 unethical and arrogant PCs making huge sums of money off the misery of parties in
2 Family Court.

3 2. *Require that the Court maintain accurate, easily available records for each PC of*
4 *complaints and actual disciplinary actions.* Currently the Court simply lists PCs who
5 have completed a superficial class. There is no information whatsoever to gauge the
6 effectiveness of the PC or whether they have been subject to complaints or disciplinary
7 action. Most parties in Family Court are completely unfamiliar with resources that
8 might give insight into the behavior of a particular provider on the PC list.
9 Unfortunately, the attorneys with whom I am familiar or have been informed about by
10 colleagues in general are at best unhelpful in informing their client about the
11 characteristics of a PC. And once appointed, a party seeks removal of a PC only at great
12 risk, the attorneys will say. In effect, the appointment of a PC is done in the dark and
13 with little to no ability to correct a bad appointment. Parties need more information to
14 make firsthand choices without being crippled by their attorney's shortcomings. Given
15 that appointment of a PC in practice is a process forced upon at least one party against
16 their will, it should be the responsibility of the Court to provide full and accurate
17 information about the people it is forcing upon the parties.
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19 3. *Create and maintain a public system of reviews of PCs.* In my experience, a PC is
20 forced upon at least one unwilling party in a Family Court case. Often the other party is
21 happy for the appointment and intends to use the PC as a means to lash out at the other
22 and to use the disparity in costs share as a weapon. Unfortunately, the PCs that have
23 been imposed in my case have been all too willing to participate, and at great cost
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1 mentally, physically, and financially have made our situation worse, not better, as they
2 encourage use of their services to increase their billable hours. During the appointment
3 process it is difficult if not impossible for a party to get accurate, actionable information
4 about a given PC, and so must trust blindly in the opinion of their attorney, who often is
5 personally involved socially with the PCs on the list and does not disclose it to their
6 client. As mentioned above, judges provide no practical oversight of PCs and the fear of
7 angering a Family Court judge who wields vast powers that are in all practical senses
8 unchecked prevents many from speaking out. PCs complete the circle of misery by
9 often forbidding recording sessions so there is no evidence of their misconduct. Having
10 a review system would potentially aid in exposing the more egregiously inept and
11 unethical PCs and help parties avoid using them.

- 12
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14 4. *Require a minimum 30% cost share.* The PC process is often used by the lower earning
15 party as a financial weapon. In theory the appointing judge can and should thoughtfully
16 determine a cost share in each circumstance. In practice, Family Court judges take the
17 road of least resistance and simply repeat the cost share calculated in the child support
18 calculation. When there is a large disparity in earning, the party attributed with the
19 lower earnings uses the PCs service essentially for free. One could claim that being the
20 lower earner the party has fewer resources. In practice it is understood that such a
21 person has access to a large amount of financial resources through parents, a new
22 spouse, or friends. In my own case the PC process was regularly used as an essentially
23 no-cost weapon to harass me. Our first PC did all business through email, and she
24 allowed the mother to write virtually unlimited complaints. I would literally be copied
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1 on or directly receive 10-20 emails per day, all billed for by the PC, and then be
2 threatened with disciplinary action by the PC for not responding immediately to each
3 one. I have a job during the day! I would be fired if I did so! Yet this PC, a female
4 attorney with a long history of being a PC in Maricopa County, continued this unethical
5 behavior for months. I found out after the appointment lapsed that this PC had also been
6 having ex parte communications with the other party in violation of the appointment
7 order...and this woman was considered one of the best PCs! She did nothing to limit
8 conflict and in fact worsened it by providing an essentially unlimited venue for the
9 mother to complain about every perceived slight and non-compliance on my part. Her
10 tenure as PC made the co-parenting relationship far worse than it would have been
11 without here involvement.

12
13 Our second PC is a very old man with a psychology degree who is also purportedly a
14 well-respected member of the PC group. His involvement as well served only to
15 encourage rapid-fire complaints from the mother, who was attributed with substantially
16 lower income despite many elements that should have led the judge to impute
17 substantial income. Had a cost share of 30% or more been imposed on the mother, her
18 groundless, vicious escapades to the PC would have been reduced substantially.

20 **COMMITTEE REVIEW OF COMMENTS**

21
22 It is noteworthy that neither the composition of the Committee nor the actions of the
23 Committee during its May 11, 2015, review of the submitted comments engenders confidence in
24 the Court as a protector of the rights of parents or children. Particularly:

- 25 1. Discussions by the Committee revolved around convenience of judicial officers and
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1 Parenting Coordinators. Comments regarding protections of rights and adding
2 means of objective oversight were largely ignored.

- 3 2. The Committee membership includes no parties to an active Family Court case with
4 an appointed PC, but it does include a practicing attorney who is also an active PC.
5 Not only did this attorney fail to disclose his status as an active PC until the matter
6 was raised in public comments, but the attorney and Committee failed to
7 acknowledge the inherent conflict of interest for a party with an obvious financial
8 interest to be a voting member of the Committee while there is no voting member
9 from the opposite position, namely parents with an active appointed PC. Further,
10 the Committee allowed and encouraged the attorney with his inherent financial
11 conflict of interest to drive the discussions, and the Committee largely deferred to
12 his positions. The single member of the Committee claiming to represent the public
13 is a wealthy medical doctor with no active Family Court case or appointed PC, and
14 this member was largely silent during discussion...hardly representing the interests
15 and viewpoints of the public. Comments from the public regarding the lack of
16 safeguards demonstrated in the real-world experiences of parties with an appointed
17 PC were treated dismissively by the Committee.

20 **COURT OVERSIGHT**

21 An important reminder regarding use and oversight of PCs by the Court is that such
22 oversight is in all practical ways non-existent. The burden of policing PCs and the judges who
23 appoint them has fallen to parties...parties who are often suffering deep financial and emotional
24 strains at the hands of PCs and the judges of the Family Court.
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1 A specific recent example:

- 2 • A sitting judge appointed a Parenting Coordinator in August of 2013. The PC
3 notably is a former Family Court judge who should understand law and rule and
4 respect the rights of the parties.
- 5 • The Parenting Coordinator (who is a former judge) wrote a report with
6 recommendations that were accepted by the sitting judge after repeated objections
7 from the Petitioner.
- 8 • Petitioner successfully appealed based on the clearly flawed nature of the PCs report
9 and the clear lack of required scrutiny by the sitting judge.
- 10 • During the end of the appeals process, a new judge replaced the sitting judge. Who
11 was this judge? The retired judge who had been appointed PC. This movement of
12 the retired judge from PC to sitting judge was a clear and egregious violation not
13 only of judicial canons due to the clear conflict of interest, but also a clear violation
14 of the existing appointment order forbidding the PC to serve in any other capacity on
15 the case.
- 16 • Upon further appeal the retired judge was removed from his role as sitting judge
17 over the case. Further, the PC's report and recommendations were rejected in their
18 entirety.

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21
22 REMEMBER that all of these miscarriages of justice were performed by current and former
23 judges of the Family Court. It is worth noting that the original sitting judge has retired and now
24 works as a Parenting Coordinator for a firm whose employees are regularly appointed against the
25 will of the parties both as PCs and to perform parenting evaluations. This firm is owned and
26

1 managed by a psychologist and former attorney whose public reviews are scathingly abysmal. And
2 yet the judges of the Family Court regularly force parties to use the firm's services.

3 Any assertion that the judges or leadership of the Family Court provide any effective
4 oversight of PCs is a delusion.

5 **CONCLUSION**

6 The importance to already suffering families in the Family Court system subjected to the
7 tyranny of a court-appointed PC cannot be understated. As such, I urge that the Court reach out
8 directly to EVERY party who has had an appointed PC and seek their direct and detailed testimony
9 and recommendations. I would never have known about this process without the help of a friend,
10 since neither my attorney nor the Court bothered to seek my input or even make me aware of this
11 process. Rather than spurn the involvement of those most affected by PCs, the Court should seek it
12 actively.
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14
15 RESPECTFULLY SUBMITTED this 14th day of June, 2015.

16 /s/ DAVID M. ALGER

17 _____
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APPENDIX 1

1 From: **Ronn Lavit** <dr.ronnlavit@gmail.com>
2 Date: Mon. May 18. 2015 at 2:21 PM
3 Subject: Re: Hourly rate change
4 To: "Alger, Dave" <david.alger.sr@algerfamily.us>

5 Dave,

6 There was no email notification. There had been sign posted in our office that stated
7 "Effective January 1, 2015 Dr. Lavit's fees have increased to \$300.00 per hour." Additionally,
8 the Court Order does not indicate that the Parent Coordinator is to provide any prior notice
9 of change in fees. It is noted that many Parent Coordinator's request a large retainer up front
10 before service is rendered, whereas Dr. Lavit does not. Please let this office know if we can
11 be of further assistance.

12 -**Kristyn**
13 **Administrative Assistant to Dr. Lavit**
14 [602-266-5823](tel:602-266-5823)
15 [602-266-0521](tel:602-266-0521) (F)

16 CONFIDENTIALITY NOTE: The information contained in this email is attorney privileged and confidential. If the reader of this message is not the
17 intended recipient, any dissemination, distribution, or copying of this communication is prohibited. If this communication has been received in error, please
18 immediately notify the sender by email and delete this message

19 *Note that e-mails are not confidential. Parties are required to copy the other party when communicating with this office. Clients who send "lengthy" e-mails will
20 be charged for this review of documentation, as well as possible case management in the event further direction/guidance is necessary. Thank you.

21 On Sun, May 17, 2015 at 9:43 PM, Alger,
22 Dave <david.alger.sr@algerfamily.us> wrote:
23 Krystin,

24 Would you please provide the date and time of the email in which Dr Lavit's office
25 notified me that he was increasing his hourly rate to \$300? I have searched my
26 email but have been unable to find it.

Thanks!
Dave Alger